Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 15-5991

In The Supreme Court of the United States

LAWRENCE EUGENE SHAW,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Petition For A Writ Of Certiorari Filed: September 4, 2015
Certiorari Granted: April 25, 2016

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United States District Court for the Central District of California

United States v. Lawrence Eugene Shaw

Case No. CR-12-00862-JFW

Relevant Docket Entries

Date	Docket Number	Proceedings
09/11/2012	11	INDICTMENT Filed as to Lawrence Eugene Shaw (1-17) count(s) 1. Offense occurred in LA. (mhe) Modified on 9/18/2012 (sr). (Entered: 09/12/2012)
12/06/2012	70	PROPOSED JURY INSTRUCTIONS filed by Defendant Lawrence Eugene Shaw (Bell, Koren) (Entered: 12/06/2012)
12/06/2012	71	PROPOSED JURY INSTRUCTIONS (Joint Memorandum re Disputed Instructions set) filed by Defendant Lawrence Eugene Shaw (Bell, Koren) (Entered: 12/06/2012)
12/11/2012	80	GOVERNMENT'S OPPOSITION TO DEFENDANT'S PROPOSED JURY INSTRUCTIONS FOR BANK FRAUD filed by Plaintiff USA as to Defendant Lawrence Eugene Shaw Re: Notice of Manual Filing (G-92) 61 (Wilkison, Tracy) (Entered: 12/11/2012)

12/11/2012	94	MINUTES OF Jury Trial – 1st Day held before Judge John F. Walter as to Defendant Lawrence Eugene Shaw: Jury empaneled and sworn. Opening statements made. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial set for 12/12/2012 at 8:00 AM before Judge John F. Walter. Court Reporter: Victoria Valine. (kbr) (Entered: 12/14/2012)
12/12/2012	95	MINUTES OF Jury Trial – 2nd Day held before Judge John F. Walter as to Defendant Lawrence Eugene Shaw: Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial set for 12/13/2012 at 8:00 AM before Judge John F. Walter. Court Reporter: Victoria Valine. (kbr) (Entered: 12/14/2012)
12/13/2012	96	MINUTES OF Jury Trial – 3rd Day held before Judge John F. Walter as to Defendant Lawrence Eugene Shaw. Closing arguments made. Jury polled. Verdict reached. Jury finds: Lawrence Eugene Shaw (1) Guilty on Counts 1-14,and 17; not Guilty on Counts 15-16. Defendant referred to Probation Office for Investigation and Report. Defendant Lawrence Eugene

		Shaw remanded to custody. Bond exonerated. Sentencing set for 3/11/2013 at 9:00 AM before Judge John F. Walter. Court Reporter: Victoria Valine. (kbr) (Entered: 12/14/2012)
12/13/2012	98	Jury Instructions (Given) by Judge John F. Walter as to Defendant Lawrence Eugene Shaw. (kbr) (Entered: 12/14/2012)
12/13/2012	103	JURY VERDICT FILED (lc) (Entered: 12/14/2012)
12/13/2012	106	REDACTED JURY VERDICT. (kbr) (Entered: 12/17/2012)
12/14/2012	100	PROPOSED JURY INSTRUCTIONS (Clean set) filed by Defendant Lawrence Eugene Shaw (Bell, Koren) (Entered: 12/14/2012)
12/14/2012	101	PROPOSED JURY INSTRUCTIONS (Disputed set) filed by Defendant Lawrence Eugene Shaw (Bell, Koren) (Entered: 12/14/2012)
12/14/2012	102	MEMORANDUM OF LAW IN SUPPORT OF DEFENSE DISPUTED JURY INSTRUCTIONS 17,19,21 filed by Defendant Lawrence Eugene Shaw (Bell, Koren) (Entered: 12/14/2012)
03/22/2013	147	NOTICE OF APPEAL to Appellate Court filedby Defendant

		Lawrence Eugene Shaw WAIVED. (Bell, Koren) (Entered: 03/22/2013)
03/22/2013	148	MINUTES OF Hearing on Motion to Dismiss Multipicitous Counts and Renewed Motion for Bail Pending Appeal 139 ; SENTENCING Hearing held before Judge John F. Walter as to Defendant Lawrence Eugene Shaw (1), Count(s) 1-12, 14, 17, Defendant is committed on Counts 1 through 12, 14, and 17 of the Indictment to the custody of the Bureau of Prisons for 57 months, all to be served concurrently Supervised release for 5 years under the terms and conditions of US Probation Office, General Order 05-02, and General Order 01-05. Special assessment of $1,400.00; Restitution of $282,380.00; Defendant shall comply with General Order No. 01-05; All fines are waived; Government's dismissed Count 13 at trial; Verdict of NOT GUILTY on Counts 15 and 16 Defendant advised of right of appeal. Refer to Judgment and Probation/Commitment Order. The Court DENIES the Renewed Motion for Bail Pending Appeal

		97. Court Reporter: Victoria Valine. (jp) (Entered: 03/25/2013)
03/22/2013	149	JUDGMENT AND COMMITMENT by Judge John F. Walter as to Defendant Lawrence Eugene Shaw (1), Defendant is committed on Counts 1 through 12, 14, and 17 of the Indictment to the custody of the Bureau of Prisons for 57 months, all to be served concurrently Supervised release for 5 years under the terms and conditions of US Probation Office, General Order 05-02, and General Order 01-05. Special assessment of $1,400.00; Restitution of $282,380.00; Defendant shall comply with General Order No. 01-05; Government's dismissed Count 13 at trial; Verdict of NOT GUILTY on Counts 15 and 16; All fines are waived; Defendant advised of right of appeal. (jp) (Entered: 03/25/2013)

United States Court of Appeals
for the Ninth Circuit

United States v. Lawrence Eugene Shaw

Case No. 13-50136

Relevant Docket Entries

Date	Docket Number	Proceedings
10/16/2013	8	Submitted (ECF) Opening Brief and excerpts of record for review. Submitted by Appellant Lawrence Eugene Shaw. Date of service: 10/16/2013. [8824308] – [COURT UPDATE: replaced brief per req from csl; resent notice. 10/17/2013 by ASW] (Bell, Koren) [Entered: 10/16/2013 07:25 PM]
10/18/2013	9	Filed clerk order: The opening brief [8] submitted by Lawrence Eugene Shaw is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the

		excerpts of record [8] submitted by Lawrence Eugene Shaw. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [8826654] (CT) [Entered: 10/18/2013 09:45 AM]
12/20/2013	18	Submitted (ECF) Answering Brief for review. Submitted by Appellee USA. Date of service: 12/20/2013. [8911157] (Wilkison, Tracy) [Entered: 12/20/2013 01:15 PM]
12/23/2013	21	Filed clerk order: The answering brief [18] submitted by USA is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8913547] (CT) [Entered: 12/23/2013 01:48 PM]
02/03/2014	23	Submitted (ECF) Reply Brief for review. Submitted by Appellant Lawrence Eugene Shaw. Date of service: 02/03/2014. [8964122]

		(Bell, Koren) [Entered: 02/03/2014 05:16 PM]
02/04/2014	24	Filed clerk order: The reply brief [23] submitted by Lawrence Eugene Shaw is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8965025] (CT) [Entered: 02/04/2014 11:51 AM]
07/14/2014	26	Submitted (ECF) Supplemental Brief for review. Submitted by Appellee USA. Date of service: 07/14/2014. [9168084] (Wilkison, Tracy) [Entered: 07/14/2014 03:20 PM]
07/14/2014	27	Submitted (ECF) Supplemental Brief for review. Submitted by Appellant Lawrence Eugene Shaw. Date of service: 07/14/2014. [9168183] (Bell, Koren) [Entered: 07/14/2014 03:41 PM]
07/15/2014	28	Filed clerk order: The supplemental brief [26] submitted by

		USA is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [9168999] (CT) [Entered: 07/15/2014 09:44 AM]
07/15/2014	29	Filed clerk order: The supplemental brief [27] submitted by Lawrence Eugene Shaw is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [9169013] (CT) [Entered: 07/15/2014 09:48 AM]
11/17/2014	35	ARGUED AND SUBMITTED TO MARY M. SCHROEDER, HARRY PREGERSON and JACQUELINE

		H. NGUYEN. [9315081] (BG) [Entered: 11/17/2014 10:41 AM]
03/27/2015	36	FILED OPINION (MARY M. SCHROEDER, HARRY PREGERSON and JACQUELINE H. NGUYEN) AFFIRMED. Judge: MMS Authoring, FILED AND ENTERED JUDGMENT. [9474263] (RMM) [Entered: 03/27/2015 07:45 AM]
05/11/2015	39	Filed (ECF) Appellant Lawrence Eugene Shaw petition for panel rehearing and petition for rehearing en banc (from 03/27/2015 opinion). Date of service: 05/11/2015. [9533189] [13-50136] – [COURT UPDATE: Attached opinion. 05/12/2015 by RY] (Bell, Koren) [Entered: 05/11/2015 09:16 PM]
06/08/2015	40	Filed order (MARY M. SCHROEDER, HARRY PREGERSON and JACQUELINE H. NGUYEN) The panel has voted to deny Appellant's petition for panel rehearing. Judges Pregerson and Nguyen have voted to deny the petition for rehearing en banc, and Judge Schroeder has so recommended. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed.

		R. App. P. 35. Appellant's petition for panel rehearing and petition for rehearing en banc are denied. Further petitions for rehearing and rehearing en banc shall not be entertained. [9564407] (WL) [Entered: 06/08/2015 09:37 AM]
06/18/2015	41	MANDATE ISSUED.(MMS, HP and JHN) [9579222] (RR) [Entered: 06/18/2015 10:50 AM]

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 2012 Grand Jury

UNITED STATES OF AMERICA, Plaintiff, v. LAWRENCE EUGENE SHAW, Defendant.	CR 12 00862 INDICTMENT [18 U.S.C. § 1344(1): Bank Fraud; 18 U.S.C. § 2(b): Causing an Act to Be Done] (Filed Sep. 11, 2012)

The Grand Jury charges:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

FINANCIAL INSTITUTIONS

1. Bank of America, National Association ("BOA") and Washington Mutual Bank ("WaMu") were federally insured financial institutions.

COUNTS ONE THROUGH SEVENTEEN

[18 U.S.C. §§1344(1), 2(b)]

2. The Grand Jury repeats, re-alleges, and incorporates by reference all of the introductory allegations set forth in paragraph 1 as if set forth herein.

A. THE FRAUDULENT SCHEME

3. Beginning on a date unknown to the Grand Jury, but no earlier than on or about June 4, 2007, and continuing through on or about October 30, 2007, in Los Angeles County, within the Central District of California, and elsewhere, defendant LAWRENCE EUGENE SHAW ("Defendant"), together with others known and unknown to the Grand Jury, knowingly and with intent to defraud, executed a scheme to defraud BOA, WaMu, and other financial institutions as to material matters.

4. The fraudulent scheme operated, in substance, in the following manner:

a. Defendant caused transfers to be made from the BOA account belonging to victim S.H. (the "S.H. BOA Account") to a PayPal account that Defendant caused to be opened in the name of S.H. (the "PayPal Account").

b. Defendant caused transfers to be made from the PayPal Account to one of two WaMu accounts ending in 941-1 and 124-7 that he opened in the name of "Richard Shaw" (respectively, the "941-1 First-Tier Account" and the "124-7 First-Tier Account"; collectively referred to as the "First-Tier Accounts")

c. Defendant caused transfers to be made from the First-Tier Accounts to another WaMu account that he opened in the name of "Richard Shaw" (the "Second-Tier Account").

d. Defendant caused checks to be written from the Second-Tier Account to himself.

e. Defendant caused these checks written to himself to be deposited into a WaMu account that he held with another individual (the "Joint WaMu Account") and caused payments, transfers, and withdrawals to be made from that account.

B. THE EXECUTIONS OF THE FRAUDULENT SCHEME

5. On or about the following dates, in Los Angeles County, within the Central District of California, and elsewhere, Defendant, together with others known and unknown to the Grand Jury, committed and willfully caused others to commit the following acts, each of which constituted an execution of the fraudulent scheme:

COUNT	DATE	ACT
ONE	06/04/07	Transfer of $7,000 from S.H. BOA Account to PayPal Account
TWO	06/06/07	Transfer of $400 from the PayPal Account to the 941-1 First-Tier Account
THREE	06/08/07	Transfer of $5,600 from the PayPal Account to the 941-1 First-Tier Account
FOUR	06/08/07	Transfer of $400 from the 941-1 First-Tier Account to the Second-Tier Account

FIVE	06/08/07	Issuance of $400 check in Defendant's name from the Second-Tier Account
SIX	06/11/07	Transfer of $5,500 from the 941-1 First-Tier Account to the Second-Tier Account
SEVEN	06/11/07	Issuance of $5,000 check in Defendant's name from the Second-Tier Account
EIGHT	06/11/07	Deposit of $4,900 into the Joint WaMu Account
NINE	10/11/07	Transfer of $8,200 from S.H. BOA Account to PayPal Account
TEN	10/13/07	Transfer of $8,500 from the PayPal Account to the 124-7 First-Tier Account
ELEVEN	10/15/07	Transfer of $8,200 from S.H. BOA Account to PayPal Account
TWELVE	10/15/07	Transfer of $8,500 from the 124-7 First-Tier Account to the Second-Tier Account
THIRTEEN	10/15/07	Transfer of $8,000 from the PayPal Account to the 124-7 First-Tier Account
FOURTEEN	10/17/07	Issuance of $8,500 check in Defendant's name from the Second-Tier Account
FIFTEEN	10/26/07	Deposit of $1,250 into the Joint WaMu Account

SIXTEEN	10/29/07	Deposit of $660 into the Joint WaMu Account
SEVENTEEN	10/30/07	Issuance of $180 check in Defendant's Name from the Second-Tier Account

A TRUE BILL

/S/

Foreperson

ANDRÉ BIROTTE JR.
United States Attorney

/s/ Robert Dugdale
ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

WESLEY L. HSU
Assistant United States Attorney
Chief, Cyber & Intellectual Property Crimes Section

ERIC D. VANDEVELDE
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Deputy Chief, Cyber & Intellectual Property Crimes Section

RONALD CHENG
Assistant United States Attorney
Cyber & Intellectual Property Crimes Section

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. LAWRENCE EUGENE SHAW, Defendant.	Case No. **CR 12-862-JFW** **JURY INSTRUCTIONS** (Filed Dec. 13, 2012)

* * *

COURT'S INSTRUCTION NO. 17.

The defendant is charged in Counts One through Twelve, and Counts Fourteen through Seventeen of the Indictment with bank fraud, in violation of Section 1344(1) of Title 18 of the United States Code. In order for the defendant to be found guilty of bank fraud, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly executed a scheme to defraud a financial institution as to a material matter;

Second, the defendant did so with the intent to defraud the financial institution; and

Third, the financial institution was insured by the Federal Deposit Insurance Corporation.

COURT'S INSTRUCTION NO. 18.

The phrase "scheme to defraud" means any deliberate plan of action or course of conduct by which someone intends to deceive, cheat, or deprive a financial institution of something of value.

It is not necessary for the government to prove that a financial institution was the only or sole victim of the scheme to defraud. It is also not necessary for the government to prove that the defendant was actually successful in defrauding any financial institution. Finally, it is not necessary for the government to prove that any financial institution lost any money or property as a result of the scheme to defraud.

COURT'S INSTRUCTION NO. 19.

A material matter is one that has a natural tendency to influence or is capable of influencing a financial institution to part with money or property.

COURT'S INSTRUCTION NO. 20.

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

COURT'S INSTRUCTION NO. 21.

An intent to defraud is an intent to deceive or cheat.

COURT'S INSTRUCTION NO. 22.

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

COURT'S INSTRUCTION NO. 23.

If you decide that a defendant was a member of a scheme to defraud and that the defendant had the intent to defraud, the defendant may be responsible for other co-schemers' actions during the course of or in furtherance of the scheme, even if the defendant did not know what they said or did.

For a defendant to be guilty of an offense committed by a co-schemer in furtherance of the scheme, the offense must be one that the defendant could reasonably foresee as a necessary and natural consequence of the scheme to defraud.

COURT'S INSTRUCTION NO. 24.

A victim's negligence, gullibility, or even foolishness is not a defense to a charge of bank fraud.

* * *

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LAWRENCE SHAW

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. LAWRENCE SHAW, Defendant.	NO. CR 12-862-JFW **DEFENSE DISPUTED JURY INSTRUCTIONS 17, 19, 21** **IN CAMERA** [Provided to Government on 12/11/12] (Filed Dec. 14, 2012)

In accordance with the Court's Order of December 7, 2012, Defendant Lawrence Shaw, through his counsel of record, Deputy Federal Public Defenders Koren

L. Bell and Jason Hannan, hereby files Disputed Jury Instructions 17, 19 and 21.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED:
December 10, 2012

By: /s/ Koren L. Bell
KOREN L. BELL
Deputy Federal
Public Defender

DEFENSE PROPOSED JURY INSTRUCTION 17

RE: ELEMENTS OF 18 U.S.C. § 1344(1)

Proposed Jury Instruction for Counts (1), (9) and (11) ("BOA" Counts):

(1) The defendant knowingly carried out a scheme to defraud BOA; that is a scheme designed to victimize BOA by causing BOA, not only Stanley Hsu, monetary loss;

(2) The defendant actively deceived BOA as to a material fact; that is, a fact that had a natural tendency to influence, or was capable of influencing, BOA to part with money or property;

(3) The defendant acted with the specific intent to defraud BOA; that is, with the intent to deceive and cheat BOA in order to expose BOA, not only Stanley Hsu, to monetary loss.

(4) BOA was federally insured by the FDIC.

It is not enough for the government to prove that Mr. Shaw carried out a scheme to obtain Mr. Hsu's money by deceiving Bank of America. In order to convict Mr. Shaw, you must find that Bank of America itself was both the target of his deception and an intended victim of the fraud.

Proposed Jury Instruction for Remaining Counts ("WaMu" Counts):

(1) The defendant knowingly carried out a scheme to defraud WaMu; that is a scheme designed to victimize WaMu, not only Stanley Hsu and/or Richard Shaw,[1] by causing WaMu itself monetary loss;

(2) The defendant actively deceived WaMu as to a material fact; that is, fact that had a natural tendency to influence, or was capable of influencing, WaMu to part with money or property;

(3) The defendant acted with the specific intent to defraud WaMu; that is, with the intent to deceive and cheat WaMu, not only Stanley Hsu and/or Richard Shaw, in order to expose WaMu itself to monetary loss.

(4) WaMu was federally insured by the FDIC.

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[1] This references to Richard Shaw in this disputed jury instruction has been added to the instruction originally proposed in the *in camera* brief filed with the Court on 12/5/12 to address the government's theory of the case as set forth in the parties' Joint Statement of the Indictment, *see* Dkt. 65, that both Stanley Hsu and Richard Shaw were "victim(s)" of the scheme.

It is not enough for the government to prove that Mr. Shaw carried out a scheme to obtain Mr. Hsu's funds by deceiving Washington Mutual. Nor is it enough for the government to prove that Mr. Shaw intended to deceive Richard Shaw in connection with the Washington Mutual accounts in Richard Shaw's name. In order to convict Mr. Shaw, you must find that Washington Mutual itself was both the target of his deception and an intended victim of the fraud.

DEFENSE PROPOSED JURY INSTRUCTION 19

RE: "INTENT TO DEFRAUD"

The defense proposed instruction for "intent to defraud" is subsumed in element (3) of its proposed instruction for 18 U.S.C. § 1344(1), *supra*, as follows:

For Counts (1), (9) and (11) ("BOA" Counts):

For purposes of Counts (1), (9) and (11), the "specific intent to defraud BOA" is the intent to deceive and cheat BOA in order to expose BOA, not only Stanley Hsu, to monetary loss.

For Remaining Counts ("WaMu" Counts):

For purposes of the remaining Counts in the Indictment, the "specific intent to defraud WaMu" is the intent to deceive and cheat WaMu, not only Stanley Hsu and/or Richard Shaw, in order to expose WaMu itself to monetary loss.

DEFENSE PROPOSED JURY INSTRUCTION 21

RE: "SCHEME TO DEFRAUD"

The defense proposed instruction for "scheme to defraud" is subsumed in element (1) of its proposed instruction for 18 U.S.C. § 1344(1), *supra*, as follows:

For Counts (1), (9) and (11) ("BOA" Counts):

For purposes of Counts (1), (9) and (11), "a scheme to defraud BOA" is a scheme designed to victimize BOA by causing BOA, not only Stanley Hsu, monetary loss.

For Remaining Counts ("WaMu" Counts):

For purposes of the remaining Counts, a "scheme to defraud WaMu" is a scheme designed to victimize WaMu, not only Stanley Hsu and/or Richard Shaw, by causing WaMu itself monetary loss.

JS-3/ent

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.	**Docket No. CR 12-862-JFW**
Defendant Lawrence Eugene Shaw [63466-112]	**Social Security No.** 9519 (Last 4 digits)
akas: Lawrence Shaw; Yu Hsiao; Yu Jen Jen; Lawrence Yujen Hsiao; Larry Shaw; Lawrence Y. Hsiao	(Filed Mar. 22, 2013)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
March	22	2013

COUNSEL | **Koren L. Bell, DFPD**
(Name of Counsel)

PLEA | ☐ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ **NOLO CONTENDERE** ☐ **NOT GUILTY**

FINDING	There being a verdict of **GUILTY,** defendant has been convicted as charged of the offense(s) of: Bank Fraud, Causing an Act to be Done in violation of 18 U.S.C. §§ 1344(1), 2(b) as charged in Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 17 of the Seventeen-Count Indictment filed on September 11, 2012 **AND** a verdict of **NOT GUILTY** on Counts 15 and 16. Count 13 dismissed by Government at trial.
JUDGMENT AND PROB/ COMM ORDER	The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Lawrence Eugene Shaw, is hereby committed on Counts 1 through 12, 14, and 17 of the Indictment to the custody of the Bureau of Prisons for a term of 57 months. This term consists of 57 months on each of Counts 1 through 12, 14 and 17 of the Indictment, all to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five years. This term consists of five years on each of Counts 1 through 12, 14 and 17 all such terms to run concurrently, under the following terms and conditions.

1. The defendant shall comply with the rules and regulations of the U. S. Probation Office, General Order 05-02, and General Order 01-05, including the three special conditions delineated in General Order 01-05;

2. During the period of community supervision the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment;

3. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgements and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation;

4. The defendant shall not be employed by, affiliated with, own or control, or otherwise participate, directly or indirectly, in the conduct of the affairs of any financial institution insured by the Federal Deposit Insurance Corporation;

5. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than the defendant's true legal name; nor shall the defendant use, for any purpose or in any manner, any name other than his true legal name or names without the prior written approval of the Probation Officer;

6. The defendant shall cooperate in the collection of a DNA sample from the defendant;

7 The defendant shall possess and use only those computers and computer-related devices, screen user names, passwords, email accounts, and internet service providers (ISPs), which have been disclosed to the Probation Officer upon commencement of supervision. Any changes or additions are to be disclosed to the Probation Officer prior to the first use. Computers and computer-related devices are personal computers, personal data assistants (PDAs), internet appliances, electronic games, cellular telephones, and digital storage media, as well as their peripheral equipment, that can access, or can be modified to access, the internet, electronic bulletin boards, and other computers;

8. All computers, computer-related devices, and their peripheral equipment, used by the defendant shall be subject to search and seizure. This shall not apply to items used at the employment's site, which are maintained and monitored by the employer;

9. The defendant shall comply with the rules and regulations of the Computer Monitoring Program. The defendant shall pay the cost of the Computer Monitoring Program, in an amount not to exceed $32 per month per device connected to the internet;

10. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer;

11. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath, and/or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using illicit drugs and alcohol, and abusing prescription medications during the period of supervision;

12. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential drug treatment program approved by the United States Probation Office for treatment of narcotic addiction or drug dependency, which may include counseling and testing, to determine if the defendant has reverted to the use of drugs, and the defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer; and

13. As directed by the Probation Officer, the defendant shall pay all or part of the costs of treating the defendant's substance abuse to the aftercare contractor during the period of community supervision, pursuant to 18 U.S.C. § 3672. The defendant shall provide payment and proof of payment as directed by the Probation Officer.

The Court authorizes the Probation Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

It is ordered that the defendant shall pay to the United States a special assessment of $1,400, which is due immediately.

It is ordered that the defendant shall pay restitution in the total amount of $282,380 pursuant to 18 U.S.C. § 3663A.

The amount of restitution ordered shall be paid as follows:

- S.H. $174,544
- PayPal $107,836

If the defendant makes a partial payment, each payee shall receive approximately proportional payment unless another priority order or percentage payment is specified in this judgment.

Restitution shall be due during the period of imprisonment, at the rate of not less than $25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

If any amount of the restitution remains unpaid after release from custody, nominal monthly payments of at least 10 percent of defendants's gross monthly income, but not less than $100, whichever is greater, during the period of supervised release. These payments shall begin 30 days after the commencement of supervision. Nominal restitution payments are ordered as the court finds that the defendant's economic circumstances do not allow for either immediate or future payment of the amount ordered.

Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The defendant shall comply with General Order No. 01-05.

Pursuant to Guideline Section 5E1.2(a), all fines are waived as the Court finds that the defendant is unable to pay and is not likely to become able to pay any fine in addition to restitution.

Defendant informed of right to appeal.

Court recommends that the defendant be placed in a facility located in Southern California.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

March 22, 2013 /s/ John F. Walter
Date U.S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

March 22, 2013
Filed Date

By Shannon Reilly /s/
Deputy Clerk

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

5. the defendant shall support his or her dependents and meet other family responsibilities;

6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;

8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;

10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;

15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;

16. and, *for felony cases only:* not possess a firearm, destructive device, or any other dangerous weapon.

☒ The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than $2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties

pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution – pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:

   Private victims (individual and corporate),

Providers of compensation to private victims,
The United States as victim;

3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure; and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value

in excess of $500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

_____ By _____

Date Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

_____ By _____

Filed Date Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ _____

Defendant Date

_____ _____

U. S. Probation Officer/ Designated Witness Date

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. LAWRENCE EUGENE SHAW, *Defendant-Appellant.*	No. 13-50136 D.C. No. 2:12-cr-00862-JFW-1 OPINION

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted
November 17, 2014 – Pasadena California

Filed March 27, 2015

Before: Mary M. Schroeder, Harry Pregerson,
and Jacqueline H. Nguyen, Circuit Judges.

Opinion by Judge Schroeder

SUMMARY*

Criminal Law

The panel affirmed a conviction for a scheme to defraud a financial institution, in violation of 18 U. S.C. § 1344(1), in a case in which the defendant used PayPal to convince banks that he was a particular bank customer and thus had authority to transfer money out of that customer's bank accounts and into a PayPal account in the defendant's control.

The panel held that for a violation of § 1344(1), the government need not prove that the defendant intended the bank to be the principal financial victim of the fraud, and that the district court therefore correctly refused jury instructions that included such a requirement.

COUNSEL

Sean Kennedy, Federal Public Defender, Koren L. Bell (argued), Deputy Federal Public Defender, Los Angeles, California, for Defendant-Appellant.

André Birotte, Jr., United States Attorney, Robert E. Dugdale, Assistant United States Attorney, Tracy L. Wilkison (argued), Assistant United States Attorney, Los Angeles, California, for Plaintiff-Appellee.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

OPINION

SCHROEDER, Circuit Judge:

Congress enacted the Bank Fraud Act in 1984, and ever since, the federal courts have grappled with whether its provisions require proof of an intent to cause harm to the bank itself. The Act contains two clauses: the first criminalizes schemes "to defraud a financial institution," and the second schemes to obtain bank assets or property under its control "by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. § 1344. Last year, the Supreme Court held that the second clause does not require proof that the defendant intended to defraud the bank. *Loughrin v. United States*, 134 S. Ct. 2384, 2387 (2014). In this case, we deal with the first clause, which by its terms does require such proof. The question here is whether that means the government must prove the defendant intended the bank to be the principal financial victim of the fraud.

The principal intended victim in this case, at least according to the defendant, was a bank customer, Stanley Hsu. The defendant, Lawrence Shaw, had access to the victim's bank statements. The gist of Shaw's scheme was to use PayPal, an online payment and money transfer service, to convince the banks that he was Hsu and thus had authority to transfer money out of Hsu's bank accounts and into the PayPal account in Shaw's control.

The government charged Shaw with violating § 1344(1). Shaw sought a jury instruction that, under

§ 1344(1), the government had to prove not only that he intended to deceive the bank, but that he also intended to target the bank as the principal financial victim of the fraud, rather than the account holder or PayPal. The district court refused to give such an instruction, concluding that clause 1 required proof only that the defendant intended to deceive the bank, not that he also intended the bank to bear the loss.

While the circuits are divided as to the requirements of § 1344(1), our Ninth Circuit case law answers Shaw's argument. We have held that, to the extent § 1344(1) requires any intent to expose the bank to a risk of loss, the requirement is easily satisfied by the bank's having to bear some potential administrative expenses that necessarily result from being defrauded. *See United States v. Wolfswinkel*, 44 F.3d 782, 786 (9th Cir. 1995). We did not hold that the bank needed to be the intended financial victim of the fraud. In this case, a principal intended financial victim of the fraud was the bank customer who held the account, and our law has dealt with that specific situation. We have held that the statute is violated where the bank is the target of the deception, even if bank customers were the intended financial victims of the fraud. *See United States v. Bonallo*, 858 F.2d 1427, 1429-30, 1430 n.2 (9th Cir. 1988).

These cases help define the meaning in this circuit of § 1344(1)'s element of intent "to defraud," and establish that it does not include intent to financially victimize the bank. That result is fully consistent with the Supreme Court's decision in *Loughrin*, and indeed

complements *Loughrin's* holding that § 1344(2) of the statute does not require any intent to defraud the bank. Section 1344(1) does require intent to defraud the bank, but neither clause requires the bank to be the intended financial victim of the fraud. We therefore affirm the conviction.

BACKGROUND

The charges in this case arose from a scheme defendant Shaw devised to take money from bank accounts belonging to Stanley Hsu, a Taiwanese businessman. Hsu opened a Bank of America account while working in the United States. When he returned to Taiwan, he arranged for the daughter of one of his employees to receive his mail in the States and forward it to him in Taiwan. Shaw was living with the daughter and routinely checked her mail. When Hsu's Bank of America statements began to arrive, Shaw opened them and learned Hsu's account and personal information.

Shaw used the information from Hsu's statements to execute the following scheme: he opened an email account in Hsu's name, then used this email account and Hsu's personal information to open a PayPal account. Shaw "linked" the PayPal account to Hsu's account with Bank of America. He was able to circumvent PayPal's security measures because of his access to the information in Hsu's bank statements.

On June 4, 2007, Shaw opened two accounts with Washington Mutual under the name of his father,

Richard Shaw, without his father's knowledge or permission. One account was a savings account ("Tier 1" account), which Shaw linked to the fake Hsu PayPal account. During the process of linking the Tier 1 account with the Hsu PayPal account, PayPal identified the request as suspicious. PayPal sent an email to the fake Hsu email account asking for additional information. In response, Shaw faxed PayPal a copy of Hsu's Bank of America account statement, and a bank statement he had altered to appear as if Hsu owned the Richard Shaw accounts. He also sent a copy of Hsu's driver's license, which he had altered to have a younger birth date. On the basis of these falsified documents, Washington Mutual and PayPal allowed the savings account in the name of Shaw's father and the PayPal account in Hsu's name to be linked.

The second account Shaw opened in his father's name was a checking account ("Tier 2" account). This account was linked to the Tier 1 savings account. Shaw's scheme ultimately siphoned the funds into a third Washington Mutual account, a joint account which Shaw had previously opened in his and the daughter's name, although without her knowledge.

Once the accounts were set up and linked, Shaw began to withdraw money from Hsu's Bank of America account through a series of online transfers and checks written to himself. He would transfer money from the Hsu Bank of America account first to the Hsu PayPal account, then transfer it from the Hsu PayPal account to the Tier 1 savings account with Washington Mutual.

Then, Shaw would transfer money from the Tier 1 account to the Tier 2 checking account, which allowed him to write checks to himself, signing his father's name. Finally, he would deposit those checks into the Washington Mutual joint account that he controlled.

Using this scheme, Shaw was able to convince the banks to transfer and release approximately $307,000 of Hsu's money to Shaw between June and October 2007. Hsu's son discovered the missing money in October 2007, reported the fraud and closed the Bank of America account.

Bank of America returned approximately $131,000 to Hsu, covering the fraudulent activity that occurred within 60 days of the reported fraud. PayPal reimbursed Bank of America for this amount. In the end, PayPal bore approximately $106,000 of the loss and Hsu over $170,000, because Hsu did not notify the banks of the losses within 60 days of many of the fraudulent transactions, as the parties all agree was required by standard banking practice.

DISTRICT COURT PROCEEDINGS

The government charged Shaw with 17 counts of bank fraud in violation of § 1344(1) and in December 2012 the case went to trial before a jury. The defense theory was that a bank fraud conviction under § 1344(1) requires fraudulent intent to expose the bank itself to monetary loss, and Shaw intended only to expose PayPal and Stanley Hsu to any monetary

loss. Shaw argued that "intent to defraud" means intent to deceive and cheat the bank. Shaw therefore asked for jury instructions which would require the government to prove that Shaw had intended the bank to be not only the target of the deception, but to suffer an actual loss or risk of loss as the financial victim of the fraud. His requested instructions provided:

> (1) The defendant knowingly carried out a scheme to defraud [the bank]; that is a scheme designed to victimize [the bank] by causing [the bank], not only Stanley Hsu, monetary loss;
>
> (2) The defendant actively deceived [the bank] as to a material fact; that is, a fact that had a natural tendency to influence, or was capable of influencing, [the bank] to part with money or property;
>
> (3) The defendant acted with the specific intent to defraud [the bank]; that is, with the intent to deceive and cheat [the bank] in order to expose [the bank], not only Stanley Hsu, to monetary loss.
>
> (4) [The bank] was federally insured by the FDIC.
>
> It is not enough for the government to prove that Mr. Shaw carried out a scheme to obtain Mr. Hsu's money by deceiving [the bank]. In order to convict Mr. Shaw, you must find that [the bank] itself was both the target of his deception and an intended victim of the fraud.

The district court declined to give Shaw's requested jury instructions. The district court concluded that risk of loss was an element that the bank fraud statute did not require, and that the bank need not be an intended financial victim of the fraud. Instead, the trial judge gave instructions based on a combination of model jury instructions and instructions used in previous bank fraud cases in the Ninth Circuit. The judge instructed the jury that:

> [i]n order for the defendant to be found guilty of bank fraud, the government must prove each of the following elements beyond a reasonable doubt:
>
> First, the defendant knowingly executed a scheme to defraud a financial institution as to a material matter;
>
> Second, the defendant did so with the intent to defraud the financial institution; and
>
> Third, the financial institution was insured by the Federal Deposit Insurance Corporation.
>
> . . .
>
> The phrase "scheme to defraud" means any deliberate plan of action or course of conduct by which someone intends to deceive, cheat, or deprive a financial institution of something of value. It is not necessary for the government to prove that a financial institution was the only or sole victim of the scheme to defraud. It is also not necessary for the government to prove that the defendant was actually

> successful in defrauding any financial institution. Finally, it is not necessary for the government to prove that any financial institution lost any money or property as a result of the scheme to defraud.
>
> An intent to defraud is an intent to deceive or cheat.

The jury convicted Shaw of 14 counts of bank fraud on December 13, 2012, and this appeal followed.

DISCUSSION

The bank fraud statute, 18 U.S.C. § 1344, provides:

> Whoever knowingly executes, or attempts to execute a scheme or artifice –
>
> (1) to defraud a financial institution; or
>
> (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;
>
> shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

In *Loughrin v. United States*, the Supreme Court construed the second clause, and held that it does not require the government to prove that the defendant intended to defraud the bank. 134 S. Ct. 2384, 2387

(2014). Section 1344(2) targets schemes to obtain property held by the bank via misrepresentation to a third party, while § 1344(1) penalizes schemes to defraud the bank itself. *See id.* at 2389-92. The Supreme Court effectively required courts to treat the two clauses separately, holding that while they overlap substantially, the clauses are disjunctive and establish distinct offenses. *Id.* at 2390, 2390 n.4.

In holding that the two clauses create separate offenses, the Court rejected the reasoning of the Third Circuit. *See id.* at 2388-89. The Third Circuit held that clauses 1 and 2 conjunctively create only one offense, and thus all violations of the statute require both the intent to defraud the bank and that the bank be exposed to a risk of loss under the relevant law. *United States v. Thomas*, 315 F.3d 190,199-201 (3d Cir. 2002) (holding that under both clauses, "a defendant must intend to cause a bank a loss or potential liability, whether by way of statutory law, common law, or business practice" (internal quotation marks omitted)). The Supreme Court expressly held that § 1344(2) does not require either intent to defraud a bank or a risk of loss to a bank. *Loughrin*, 134 S. Ct. at 2389-90, 2395 n.9. In doing so, it emphasized that intent to defraud a bank is the essence of § 1344(1). *Id.* at 2389-90.

Shaw's argument in this case therefore focuses on the difference between the two clauses. He points out that the second clause covers schemes intended to obtain a third party's property. He argues that the first clause, under which he was convicted, therefore must require that a defendant intend to obtain the bank's

property. Thus, he asks us to conclude that a conviction under § 1344(1) requires a showing that the defendant intended to expose the bank to the principal risk of loss. Such a requirement was not satisfied since, in this case, Shaw intended his principal target to have been the bank's customer, Hsu.

Shaw thus seeks to characterize the difference between the two clauses as involving the intended financial victim of the fraud, i.e., the intended bearer of the loss. The language of neither clause of the statute, however, refers to monetary loss or to the risk of such loss. The statutory language focuses on the intended victim of the deception, not the intended bearer of the loss. Section 1344(1) requires the intent to deceive the bank. Section 1344(2) requires false or fraudulent representations or pretenses to third parties. The Supreme Court made this point in *Loughrin* when it noted that the second clause was intended to broaden the scope of bank fraud to include schemes that did not involve deception of the bank directly, such as schemes to use stolen credit cards. *See* 134 S. Ct. at 2391-92. Section 1344(1) thus covers schemes to deceive the bank directly. Neither clause requires the government to establish the defendant intended the bank to suffer a financial loss.

Analysis of our circuit's law before *Loughrin* counsels the same result. In *United States v. Bonallo*, 858 F.2d 1427 (9th Cir. 1988), we recognized that under § 1344(1) the bank itself need not be the sole or primary victim of the scheme. Rather, the bank is defrauded within the meaning of § 1344(1) when it is the

target of the deceit, even if the scheme targeted the bank's customer accounts as the source of the money. *See id.* at 1434 n.9.

In *Bonallo*, a bank employee withdrew funds from his own account via the ATM, then manipulated the bank's computer system to charge the withdrawals against other customers' accounts. *Id.* at 1429-30. The defendant argued that the other customers were the intended victims of his scheme and therefore the bank was not defrauded within the meaning of the statute. We rejected this argument, finding that the bank was the target of his misrepresentation, even if the customers' accounts were the source of the funds. *See id.* at 1434 n.9. In short, the defendant was guilty of bank fraud because he intended to deceive the bank.

In *United States v. Wolfswinkel*, 44 F.3d 782 (9th Cir. 1995), we considered whether a risk of financial loss to a bank was as an element of § 1344(1). We held that even if there were such a requirement of financial loss to the bank, it was easily satisfied. The defendant was convicted of bank fraud under § 1344(1) after he engaged in a check-kiting scheme, during which he convinced a bank officer to sell him cashier's checks paid for with insufficiently-backed checks. *Id.* at 784. On appeal, Wolfswinkel argued that the government had to show he exposed the bank to a risk of loss under § 1344(1), and he had not, because he provided collateral to the bank to secure any losses for the bounced checks. *Id.* at 785-86.

In affirming Wolfswinkel's conviction, we recognized a circuit split as to whether § 1344(1) requires proof of risk of loss to the bank to establish the defendant's intent to defraud. *Id.* at 786. We held, however, that even assuming there were such a requirement, Wolfswinkel's scheme satisfied it. *See id.* Although he had provided security for potential losses, Wolfswinkel exposed the bank to a risk of loss in the form of administrative costs and the threat of competing creditor claims if it were forced to liquidate the collateral. *Id.* The defendant need not have intended the bank to bear the risk of losing the amount involved in the financial scheme itself.

The Supreme Court's decision in *Loughrin* does not affect the validity of our precedent, or undermine it in any way. If anything, it lends credence to our reluctance to impose any risk of loss requirement in a prosecution under the bank fraud statute. *Loughrin* confirms our conclusion that the difference between the two clauses is which entity the defendant intended to deceive, not which entity the defendant intended to bear the financial loss. *See* 134 S. Ct. at 2389-90 (emphasizing that nothing in § 1344(2) requires specific intent to deceive a bank, which § 1344(1) already covers).

Shaw stresses that under the applicable law, the bank, in the end, did not actually lose anything. The losses ultimately fell on Hsu for failing to spot much of the fraud within the legally required 60 days, and on PayPal, which had to reimburse the bank for the rest. Shaw therefore asks us to conclude that he could not

have intended to defraud the bank. A similar argument with respect to clause 2 was dismissed summarily in *Loughrin* on the ground that the federal statute was intended to avoid having cases turn on the technical ramifications of banking law. *Id.* at 2395 n.9. In characterizing § 1344(2), the Court said that the language "appears calculated to avoid entangling courts in technical issues of banking law about whether the financial institution or, alternatively, a depositor would suffer the loss from a successful fraud." *Id.* We conclude that the same legislative intent must be ascribed to § 1344(1). There is no reason to believe Congress wanted courts to become more entangled in such technical issues under the first clause than under the second clause.

We recognize that some circuits have held that risk of financial loss to the bank is an element that must be proven under § 1344(1). *See, e.g., United States v. Staples*, 435 F.3d 860, 866-67 (8th Cir. 2006) (discussing difference of opinion among circuits on whether intent to harm or cause the bank a risk of loss is required). The reason given is that the purpose of the statute is protection of the federal fisc, and that purpose is not served if the bank faces no financial risk. *See, e.g., Thomas*, 315 F.3d at 201. Circuits adopting the requirement cite to the legislative history of the bank fraud statute, which shows that Congress enacted it because of the "strong federal interest in protecting the financial integrity of [federally insured financial] institutions." *See, e.g., id.* (quoting S. Rep. No. 98-225, at 377 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3517.);

United States v. Nkansah, 699 F.3d 743, 759 (2d Cir. 2012) (same). But requiring proof of intent that a bank bear a risk of loss does not serve this end. The entity that bears the risk of loss does not necessarily depend upon the entity (i.e., the federally insured financial institution) that the defendant intends to harm. It depends on the operation of banking laws that, as this case demonstrates, may result in having the instruments of the fraud, like the bank's customers or entities like PayPal, ultimately bear the loss. A scheme that is intended to harm third parties may, in fact, end up hurting the bank, and vice versa. Few criminals have any knowledge of the rules of law that govern which entity bears the risk of loss. Requiring intent to harm the bank only makes it more difficult to prosecute bank fraud. *Nkansah*, 699 F.3d at 759 (Lynch, J., concurring); *see also Loughrin*, 134 S. Ct. at 2395 n.9 (citing *Nkansah* concurrence with approval).

The Court in *Loughrin* held that § 1344(2) does not require intent to defraud a bank because the plain language of that section includes no such requirement. 134 S. Ct. at 2389-2390. We similarly decline to read an additional element into § 1344(1) that Congress did not include; that does not serve the Congressional purpose; and that could needlessly entangle judges and juries in the intricacies of banking law. The district court correctly refused instructions that included such a requirement.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. LAWRENCE EUGENE SHAW, Defendant-Appellant.	No. 13-50136 D.C. No. 2:12-cr-00862-JFW-1 Central District of California, Los Angeles ORDER (Filed Jun. 8, 2015)

Before: SCHROEDER, PREGERSON, and NGUYEN, Circuit Judges.

The panel has voted to deny Appellant's petition for panel rehearing. Judges Pregerson and Nguyen have voted to deny the petition for rehearing en banc, and Judge Schroeder has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellant's petition for panel rehearing and petition for rehearing en banc are denied. Further petitions for rehearing and rehearing en banc shall not be entertained.